IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 10796 of 2004
with
CRIMINAL MISC.APPLICATION No 10797 of 2004
with
CRIMINAL MISC.APPLICATION No 10798 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRIT CHHANABHAI PATEL

Versus

THE STATE OF GUJARAT

Appearance:

NANAVATI ASSOCIATES for applicants

MR HLL JANI, APP for opponent

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 08/12/2004

COMMON ORAL JUDGEMENT

These three applications under Sec.439 of the Code of Criminal Procedure have been filed for releasing the applicants on bail as they are in judicial custody in connection with the complaint filed by the complainant for the offences punishable under Sec.304 read with Sec.114 of IP Code registered as C.R.No.I-1028 of 2004 with Satellite Police Station.

2. The case in short is that Times of India Group had given a contract to M/s Sharad Construction Pvt.Ltd., Mumbai, for construction of its press building at Vejalpur, Ahmedabad. When the construction work was in progress on 8-11-2004 at 8.00 p.m., the slab under construction suddenly collapsed resulting into fatal injuries to eight persons and severe injuries to many others. Hence, a complaint was filed for the offence punishable under Sec.304 read with Sec.114 of IP Code and investigation started. During the course of investigation, since names of the present applicants and others were disclosed as accused, they were arrested and sent into judicial custody.

3. The applications for bail being Cri.Misc.Appln.Nos.1168, 1167 and 1169 of 2004 respectively preferred by the applicants before the court below were rejected by the learned Addl. Sessions and Fast Track Judge, Ahmedabad(Rural), vide order dated 23-11-2004 which is giving rise to prefer the present applications.

4. Heard learned Senior Counsel, Mr.K.S.Nanavati for M/s Nanavati Associates, learned counsel, Mr.J.M.Panchal and Mr.Ashish M. Dagli, on behalf of the applicants and Mr.H.L.Jani, learned Addl. Public Prosecutor for the opponent-State.

5. Rule. Mr.Mr.H.L.Jani, learned Addl. Public Prosecutor for the State waives the service of Rule on behalf of the opponent-State in these applications.

6. As all these applications arise out of the same Crime Register of Satellite Police Station, they are heard together and are being decided by this common judgment and order.

7. It is mainly argued by Mr.K.S.Nanavati that M/s Sharad Construction Pvt. Ltd. (hereinafter referred to as "the Company" for short), Mumbai, was carrying on the construction work in pursuance of a contract given to them by Times of India for construction of its press at Vejalpur, Ahmedabad, and when the construction was going

on, the slab under construction had suddenly collapsed. According to him, said construction work was being carried on in accordance with the plans and the structural designs provided by the structural engineer and architect. Moreover, the plan was duly approved by the competent authority i.e. Ahmedabad Urban Development Authority. It is further argued that there is no evidence to show that the material used in the construction is of substandard quality. According to him, the material used in the construction is purchased from well reputed Company of India and construction was being carried out as per the approved plans and designs approved by the competent authority. It is further argued that four other premises having the same structure, plan and structural design have been constructed by the Company in the campus in question and all these premises are in perfect condition and it is the 5th project undertaken by the Company with the same plan and structural design with the same structural engineer and architect. However, during the course of work, the slab under construction had suddenly collapsed which means that it is a case of accident and in any circumstances of the case cannot be said to be with an intention of committing criminal offence. If one accepts the report of FSL and the finding given by the court while deciding the applications under Sec.439, Cr.P.C., at the most it can be said to be a negligence on the part of some of the applicants which, in any manner cannot be said to be an offence of Sec.304 of IPC.

8. It is submitted that the applicant of Cri.Misc.Appln.No.10796 of 2004 is the area in charge looking after the project of the Company and is stationed and residing at Vadodara. He is not in day-to-day supervision of the present site of the Company. The person in charge of supervision of the said work as a site engineer, Shri Rupen J.Shah, was also seriously injured in the incident and is still in hospital which, according to him, shows that there was no intention or knowledge on the part of the present applicants or other managerial staff of the Company in committing any criminal offence. On behalf of the applicant of Cri.Misc.Appln.No.10797 of 2004, it is submitted that he was appointed as Site Supervisor/Clerk of Works in respect of the site of Vejalpur as he is a qualified engineer. Limited supervision was only supposed to be carried out by him as stipulated in the contract. On behalf of the applicants of Cri.Misc.Appln.No.10798 of 2004, it is submitted that applicant No.1 is an area engineer, applicant Nos.2 and 3 are labourers doing the centering work and were not in charge of day-to-day

supervision of the said site while the applicant No.4 was working as a labourer at the site.

9. Learned counsel for the applicants have relied upon the judgment dated 29-6-2001 delivered by this Court (Coram: D.B.Buch,J. as was then) in a group of matters being Cri.Misc.Appln.Nos.4065 to 4068, 4070 to 4073, 4114, 4117, 3225, 3237, 3641, 3642, 3650, 4407 of 2001. It is submitted that applicants have roots in the society and would be available for investigation and for trial also. Even if it is believed that the incident in question falls under Sec.304-A of IP Code, then also, keeping in mind the sentence which would be awardable, it is requested that the applicants are required to be released on bail. For the purpose of procuring the presence of applicants and for other aspects, if some stringent conditions are imposed, ends of justice would be met. It is also submitted by Mr.Nanavati that the Company had announced ex-gratia payment of Rs.2.00 lakhs to the families of each deceased and Rs.50,000/- to each injured. It is made clear by him that said amount would be in addition to the amount which may be awarded under the Workmen's Compensation Act.

10. Mr.H.L.Jani, learned Addl. Public Prosecutor, on the other hand, has taken me through the FIR, FSL report, statements of witnesses and the reasoned order passed by the court below. It is contended that looking to the seriousness of the incident in question, the applicants may not be released on bail. According to him, it can be said to be an offence punishable under Sec.304-A of IP Code. The fact that construction work was being carried out as per the approved plan of the competent authority is not disputed by him.

11. I have gone through the FIR and the documents which have been shown to me along with the reasoned order passed by the court below. I have given anxious thought to the arguments advanced and submissions made on behalf of the respective parties. It is prima-facie established that the construction in question has been collapsed during the process of laying of slab. It is also prima-facie established that construction which was going on was carried out after obtaining necessary permission. It appears that the work was carried out after the plan and structural design were approved by the architect and the structural engineer. Even AUDA has approved the plan. It also appears that senior officer of the Company who was present at the relevant time has also received serious injuries in the incident in question. As argued by the learned counsel for the applicants, the readymix

which is the construction material provided by the well-known company namely, Larsen & Tubro has been used in the said construction. However, it is not advisable to decide at this stage as to whether it is a case of accident nor is a case of negligence of the applicants nor a case falling under Sec.304 of IPC. The court below has dealt with the above aspects of the matter keeping in mind and reproducing the preliminary report of FSL and prima-facie held that it was a case of negligence. However, without entering into the above arena of the matter, since prosecution has prima-facie failed to establish that there was an intention on the part of the applicants to commit the offence in question and looking to the facts and circumstances of the case, the applicants are required to be released on bail.

12. All these applications are accordingly allowed and the applicants are ordered to be released on bail in connection with Crime Register No.I-1028 of 2004 registered with Satellite Police Station for the offences alleged against them in this application on the applicant of Cri.Misc.Appln.No.10796 of 2004 and the applicant No.1 of Cri.Misc.Appln.No.10798 of 2004 executing bond in the sum of Rs.50,000/(Rupees Fifty Thousand only) each with one surety each of the like amount, the applicant of Cri.Misc.Appln.No.10797 of 2004 executing bond in the sum of Rs.25,000/-(Rupees TwenyFive Thousand only) with one surety of the like amount and the applicant Nos.2, 3 and 4 of Cri.Misc.Appln.No.10798 of 2004 executing bond in the sum of Rs.5,000/-(Rupees Five Thousand only) each with one surety each of the like amount to the satisfaction of the lower Court and subject to the conditions that they shall;

a) not take undue advantage of liberty or abuse their liberty;

b) not try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) furnish the present and permanent address of their residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

f) mark their presence before the concerned Police Station once in a month more particularly between 1st and 10th of the month between 10.00 a.m. and 2.00 p.m. for six months;

g) not leave the limit of State of Gujarat without prior permission of the Court; and

h) surrender their passport, if any, within a week to the lower Court.

13. If breach of any of the above conditions is committed, the Sessions Judge concerned will be free to issue warrant or take appropriate action in the matter.

14. Bail before the lower Court having jurisdiction try the case.

15. Rule is made absolute. Direct service is permitted.

16. The observations by this Court in this judgment being prima-facie ones for the purpose of deciding these applications may not prejudice the parties in trial.

17. Office to place a copy of this judgment in each matter.

(R.P.DHOLAKIA,J.)

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